IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A) No.2693 of 2006
Appeal NO. 1339/06

Commissioner of Income Tax
Madurai. .. Appellant/Appellant

Vs.

M/s.Indian Ocean Garnet
Sands Company (P) Ltd.,
No.146, Palayamkottai Road,
Tuticorin. .. Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 7.7.2006 made in ITA No.887/Mds/2004 for the assessment year 2000-01 against order of the Commissioner of Income Tax Appeals Madurai in ITA NO. 304/02-03 dated 23.01.04 against the order of Deputy Commissioner of Income Tax Circle I Tuticorin in PAN GIR NO. I-104/Cir-I/TTN 2000/2001 dated 20/12/2002.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T
(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 7.7.2006 made in ITA No.887/Mds/2004 for the assessment year 2000-01.

2. The Revenue is the appellant. The issue raised in this appeal relates to the assessment year 2000-01. The Assessing Officer, on completing the assessment, disallowed the claim of the assessee in respect of replacement expenditure on magnetic roll separator and treated the same as capital expenditure. Aggrieved, the assessee went on appeal and the Commissioner of Income-tax (Appeals) held in favour of the assessee. The Revenue took up the issue

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before the appellate Tribunal and the Tribunal held the issue in favour of the assessee. Hence, this appeal by the Revenue raising the following questions of law:-

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure ?
>
> 2. Whether in the facts and circumstances of the case, replacement of independent complete machinery can be treated as revenue expenditure ?
>
> 3. Whether in the facts and circumstances of the case, the Tribunal was right in deciding the issue without going into the concept of block of asset ?"

3. Mr.N.Muralikumaran, learned Senior Standing Counsel for the appellant fairly concedes that the issues raised in this appeal are covered against the Revenue in view of the decision of this Court in COMMISSIONER OF INCOME-TAX v. JANAKIRAM MILLS LTD., [2005] 275 ITR 403.

4. With regard to question Nos.1 and 2, the question whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the Appellate Tribunal, finding that replacement of machinery is revenue expenditure, held that the claim of the assessee cannot be disallowed.

5. This Court, in COMMISSIONER OF INCOME-TAX v. JANAKIRAM MILLS LTD., referred supra, held that all plant and machinery put together amounts to a complete spinning mill which is capable of manufacturing yarn and hence, each replaced machine could not be considered as an independent one and no intermediate marketable product was produced.

6. In view of the ratio laid down by this Court in the decision cited supra, we hold that the expenditure on replacement of machinery is revenue expenditure and therefore, the Tribunal was right in allowing the claim of the assessee.

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7. With regard to question No.3, this Court, in the decision cited supra, explained the principle or object of introducing the concept of 'Block of Assets' in detail. It is apposite to refer the following:

> "Regarding the argument relating to "block of assets", it is the claim of learned counsel for the assessees that the said principle or object of introduction of the above concept is totally not applicable relating to the nature of expenditure incurred by the respondent. These provisions were introduced from April 2, 1987, as defined under section 2(11) of the Income-tax Act, 1961 and they are in operation on different field. It is stated that they were intended to replace the provisions on depreciation of capital assets. The block of assets concept was introduced with a view to streamline the excess depreciation allowed and to allow terminal depreciation. When the block of assets concept was introduced, the provisions relating to terminal depreciation and the profit result from the sale of assets, which were originally considered under sections 32(1)(iii) and 41(2), were suitably amended to fall in line with the proposed simplification of the concept of block of assets. The circular describing the concept of block of assets is explained by the Central Board of Direct Taxes by Circular No. 469 dated September 23, 1996 reported in [1986] 162 ITR (St.) 21, 24. In the instant case, no acquisition of any new asset, much less capital of any enduring advantage resulted to the assessee-respondent. The assessees replaced the worn out part of machineries without discontinuing their production activities. No claim for depreciation was ever made before any authorities either by the assessees or by the Revenue to consider the question as block of assets nor was there any necessity to do so. The Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. It is, therefore, stated that such question does not arise out of the order of the Appellate Tribunal for considering the same by this court under section 260A."

8. In the instant case also, the assessee had only replaced the magnetic roll separator without discontinuing their production activities and that there was no acquisition of any new asset, much less capital of any

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enduring advantage. A perusal of the orders of the authorities below shows that no claim for depreciation was ever made before any authorities either by the assessee or by the Revenue to consider the question of block of assets nor was there any necessity to do so. Moreover, the Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. Therefore, applying the law laid down by the decision cited supra, such question does not arise out of the order of the Appellate Tribunal for considering the same by this court under section 260A of the Act.

9. The above view was also taken by this Court in Commissioner of Income Tax v. Loyal Textile Mills Ltd., [2006] 284 ITR 658.

In view of the ratio laid down by this Court in the decisions cited supra, no substantial question of law arises for our consideration in this appeal and therefore, the same is dismissed. No costs.
Sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "C". Chennai.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income
Tax (Appeals), I Madurai.

4.The Asst. Commissioner of
Income Tax, Circle-I
Tuticorin.

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5. The Commissioner of Income Tax, Madurai

6. The Assistant Registrar
Income Tax Appellate Tribunal
Besant Nagar, Chennai 600 090

+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 741

MJ(CO)
NM(10.01.07)

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